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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,427	10/22/2003	Wolfgang Wolff	H 5165 PCT/US	7828
55495	7590	12/21/2005	EXAMINER	
DANN DORFMAN HERRELL AND SKILLMAN A PROFESSIONAL CORPORATION 1601 MARKET STREET SUITE 2400 PHILADELPHIA, PA 19103-2307			ELHILO, EISA B	
			ART UNIT	PAPER NUMBER
			1751	

DATE MAILED: 12/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/691,427	WOLFF ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Eisa B. Elhilo	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 October 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 23-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

- 1 This action is responsive to the amendment filed on October 17, 2005.
- 2 The cancellation of claims 1-22 is acknowledged. Pending claims are 23-37.
- 3 The rejection of claims 7-9, 11-12 and 14 under 35 U.S.C. 112, second paragraph, is rendered moot because of cancellation of these claims.
- 4 The rejection of claims 1-5, 13, 15 and 17-22 under 35 U.S.C. 103(a) as being unpatentable over Madrange et al. (US 5,143,518) in view of Cotteret et al. (US 5,735, 908) is rendered moot because of cancellation of these claims.
- 5 The rejection of claims 1, 13 and 15-19 under 35 U.S.C. 103(a) as being unpatentable over Millequant et al. (US 6,312,677 B1) is rendered moot because of cancellation of these claims.

### NEW GROUND OF REJECTION

#### *Claim Rejections - 35 USC § 103*

- 6 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23-37 are rejected under 35 U.S.C. 103(A) as being unpatentable over Madrange et al. (US 5,143,518) in view of Cottard et al. (US 2001/0023514 A1).

Madrange et al. (US' 518) teaches a hair dyeing composition comprising oxidation dye precursors (see col. 12, line 60-61), silicone polymers of dialkyl polysiloxane such as dimethyl polysiloxane and amodimethicone as claimed in claims 23-27 (see col. 2, line 45 and col. 31,

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claim 12) and cationic polymer such as a co-polymer of dimethyldiallylammonium chloride with acrylamide (Merquat 550) (see col. 12, lines 38-45), primary intermediate (oxidation base) of 5-aminoindole (indole derivative) as claimed in claims 31-32 (see col. 13, line 49), secondary intermediates (couplers) as claimed in claim 33 (see col. 12, lines 65-68), direct dyes (substantive dye) as claimed in claim 34 (see col. 14, line 17), quaternary ammonium compound of trimethylalkyl( $C_{20}$ - $C_{22}$ ) ammonium chloride and dimethyl dilauryl ammonium chloride as claimed in claim 23 and 35 (see col. 5, lines 16-24) and oxidizing agent (see col. 15, line 43), Madrange et al. (US' 518) also teaches a method for dyeing hair comprising applying to the hair the dyeing composition as described above after mixing with the oxidizing agent and the mixture is left on hair for a sufficient time and after which the hair is rinsed and dried wherein the reference's method is similar to those claimed in claim 37(see col. 15, lines 50-68 and col. 16, lines 1-2).

The instant claims differ from the reference by reciting specific species of amphoteric polymers. Further, the reference does not teach or disclose the claimed kit.

However, Madrange et al. (US' 518) teaches a hair dyeing composition comprising amphoteric homopolymers of dimethyldiallylammonium chloride (Merquat 100) and amphoteric copolymer of dimethyldiallylammonium chloride with acrylamide (Merquat 550) (see col. 12, lines 40-45).

Cottard et al. (US' 514 A1) in analogous art of hair dyeing formulation, teaches a composition comprising amphoteric co-polymers of diallyldimethylammonium chloride/ acrylic acid (Merquat 280) and amphoteric co-polymer of dimethyldiallylammonium chloride/acrylic acid/acrylamide terpolymer (Merquat Plus 3330) as claimed in claims 28-30 (see page 13,

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paragraphs 0253-0258). Cottard et al. (US' 514 A1) also teaches a multi-compartment dyeing devices or kits which are similar to the kit as claimed (see page 23, claim 81).

Therefore, in view of teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of Madrange et al. (US' 518) by incorporating the amphoteric co-polymers of diallyldimethylammonium chloride/acrylic acid (Merquat 280) and amphoteric polymer of dimethyldiallylammonium chloride/acrylic acid/acrylamide terpolymer (Merquat Plus 3330) as taught by Cottard et al. (US' 514 A1) to make such a composition with a reasonable expectation of success because the primary reference of Madrange et al. (US' 518) suggests the use of amphoteric polymers in hair dyeing composition. The secondary reference of Cottard et al. (US' 514 A1) clearly teaches the claimed species of amphoteric co-polymer of diallyldimethylammonium chloride/acrylic acid (Merquat 280) and amphoteric polymer of dimethyldiallylammonium chloride/acrylic acid/acrylamide terpolymer (Merquat Plus 3330) and wherein the dyeing composition is provided in a dyeing devices or kits, and, thus, a person of an ordinary skill in the art would expect that the use of amphoteric co-polymers of diallyldimethylammonium chloride/acrylic acid (Merquat 280) and amphoteric polymer of dimethyldiallylammonium chloride/acrylic acid/acrylamide terpolymer (Merquat Plus 3330) in a hair dyeing composition as taught by Cottard et al. (US' 514 A1), would be similarly useful and applicable to the analogous dyeing composition taught by the primary reference of Madrange et al. (US' 518), and would expect such a composition to have similar properties to those claimed, absent unexpected results.

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7        Claims 23, 28, 31-33 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Millequant et al. (US 6,312,677 B1).

Millequant et al. (US' 677 B1) teaches a hair dyeing composition comprising silicone polymers (see col. 10, formula VI) and co-polymer of dimethyldiallylammonium chloride and acrylic acid (Merquat 280) (amphoteric polymer) as claimed in claims 23 and 28 (see col. 13, lines 44-49), oxidation dye precursors (primary intermediates), couplers (secondary intermediates), indole precursors and direct dyes as claimed in claims 23 and 31-33 (see col. 14, lines 23-42), quaternary ammonium compound of alkyl trimethyl ammonium chloride as claimed in claim 23 (see col. 12, formula (X)), . Millequant et al. (US' 677) also teaches a similar method for dyeing hair comprising applying to the hair the dyeing composition as described above after diluted at the time of use with the oxidizing solution wherein the composition is allowed to act for a period of time and the hair is then rinsed as claimed in claim 37 (see col. 15, lines 59-64).

The instant claims differ from the reference by reciting a kit for coloring keratin fibers.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to formulate such a dyeing composition in kit or device to arrive at the claimed invention, because Millequant et al. (US' 677 B1) clearly teaches that the dyeing composition is mixed with the oxidizing agent at the time of use (see col. 15, lines 59-61) which implies that the dyeing composition is provided and kept in a container differs from the one that holding the oxidizing agents, and, thus, a person of the ordinary skill in the art would expect such a composition to have similar properties to those claimed, absent unexpected results.

Further, applicant has not shown on record the criticality of the compartment kits in the claimed invention.

***Response to Applicant's Arguments***

Applicant's arguments with respect to claims 1-5, 7-9 and 11-23 have been considered but are moot in view of the new ground(s) of rejection.

Further, with respect to the arguments based upon the rejection under 102(b), The examiner inadvertently used a wrong statement in the rejection while, the prima facie case of obviousness rejection is applied on the claims as indicated in the embodiment of the rejection.

8 Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

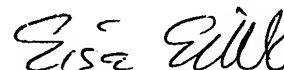
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Eisa Elhilo  
Primary Examiner  
Art Unit 1751

December 14, 2005